
1991 Wis Eth Bd 3
LOBBYING AND LOBBYISTS

An elected state official may not accept a lobbyist's offer to buy stock in a non-publicly held corporation in which the lobbyist is a major investor. Eth. Bd. 626

March 8, 1991

Facts

[1] This opinion is based upon these understandings:

- a. You are an elected state official.
- b. You and another elected state official are the sole shareholders of a corporation.
- c. A lobbyist has offered you and the other official the opportunity to purchase 9% of the stock of a non-publicly held corporation in which the lobbyist is a major investor. You ask about your acquisition of this interest by your having your corporation take title to the shares.
- d. Via your corporation, you and the other official would stand to receive 9% of any profits of the non-publicly held corporation and would bear 9% of any losses.

Question

[2] The State of Wisconsin Ethics Board understands your question to be:

Does the Ethics Code or lobbying law stand as a restriction to your purchase, via an intermediary, of an interest offered by a lobbyist in the non-publicly held corporation in which the lobbyist is a major investor?

Discussion

[3] In our view, there is nothing in the Ethics Code that would bar the transaction you contemplate, but the lobbying law is an obstacle to your participating in the proposed venture.

[4] In prior opinions addressing issues similar to those presented by your request for advice, the Ethics Board has stated there is no general prohibition in the Ethics Code that would bar a public official's participation in a business venture with a lobbyist. 5 Op. Eth. Bd. 87 (1982); 4 Op. Eth. Bd. 73 (1980). In those opinions, the Board indicated that any proscription would be

found at § 19.45(3), *Wisconsin Statutes*, which prohibits a public official from accepting anything of value if it could be reasonably expected to influence the official's judgment. It has been and remains our view that there is no basis to suggest that the receipt of anything of value through participation in such business ventures would necessarily skew an official's good judgment. However, we cautioned in our prior opinion that the lobbying law, then administered by the Secretary of State, may have application.

[5] In the lobbying law, the Legislature has flatly prohibited an elected official from accepting anything of pecuniary value from a lobbyist except in limited circumstances not applicable here.¹ An item or service has pecuniary value if it can be valued in money.² In the situation about which you ask, a lobbyist is offering you an investment opportunity in the form of stock in a privately-held corporation that is not available to the general public. The stock clearly has pecuniary value as evidenced by the fact that you are willing to pay for it.³

[6] It is true that you plan to pay for the stock you will be receiving. But the lobbying law makes no exception to accepting items of pecuniary value from a lobbyist even if an official furnishes something in return.⁴ The law's apparent purpose is to draw a clear line barring private economic transactions between state officials and lobbyists under terms not generally available to others.⁵ The line would be irrevocably blurred if an exception were to

¹ Section 13.625(3), *Wisconsin Statutes*, provides:

13.625(3) No candidate for an elective state office, elective state official, agency official or legislative employe of the state may solicit or accept anything of pecuniary value from a lobbyist or principal, except as permitted under subs. (1)(b)3 and (c), (2), (5), (6) and (7). No personal campaign committee of a candidate for state office may accept anything of pecuniary value from a lobbyist or principal, except as permitted for such a candidate under subs. (1)(b)3 and (c), (2) and (6).

² See Black's Law Dictionary (5th ed. 1979). The Legislature elsewhere has defined pecuniary value as:

Anything of value in the form of money, a negotiable instrument, or a commercial interest or anything else the primary significance of which is economic advantage

§ 946.84(4), *Wisconsin Statutes*.

³ In our prior opinions it was recognized that "anything of value" could include entrance into a partnership or the matching of venture capital. 5 Op. Eth. Bd. 87, 88 (1982); 4 Op. Eth. Bd. 73, 74 (1980).

⁴ 77 Op. AG 160 (1988) (receipt of compensation from a principal in exchange for services rendered is barred by the lobbying law).

⁵ The Legislature has permitted state officials to engage in economic transactions with lobbyists' employers in circumstances in which officials stand in an identical position with, and are treated no differently than, other members of the general public. §13.625(2), *Wisconsin Statutes*, provides that the prohibited practices provisions do not

be read into the law permitting officials to engage with lobbyists in private business transactions in which there is no market measure to determine whether the deal is economically balanced.

[7] For these reasons, we believe the law bars you from entering into the transaction you propose.

Advice

[8] The Ethics Board advises that you not accept an investment opportunity offered by a lobbyist.